

§ 31B-3. Effect of renunciation.

(a) Unless the decedent, donee of a power of appointment, or creator of an interest under an inter vivos instrument has otherwise provided in the instrument creating the interest, the property or interest renounced devolves as follows:

- (1) If the renunciation is filed within the time period described in G.S. 31B-2(a), the property or interest renounced devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the person whose property or interest is being renounced had predeceased the date the transfer of the renounced interest was complete for federal and State inheritance, estate, and gift tax purposes, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity never existed. Any such renunciation relates back for all purposes to the date the transfer of the renounced interest was complete for the purpose of those taxes, and the spouse of the person whose property or interest is being renounced has no elective share or other marital interest in the renounced property.
- (2) If the renunciation is not filed within the time period described in G.S. 31B-2(a), the person whose property or interest is being renounced is deemed to have made a transfer of the property or interest and the property or interest devolves and any interest that takes effect in possession or enjoyment after the termination of the property or interest renounced takes effect as if the person whose property or interest is being renounced had died on the date the renunciation is filed, or, in the case of the renunciation of a fiduciary right, power, privilege, or immunity, the property or interest subject to the power devolves as if the fiduciary right, power, privilege, or immunity ceased to exist as of the date the renunciation is filed.
- (3) Any future interest that takes effect in possession or enjoyment after the termination of the estate or interest renounced takes effect as if the person whose property or interest is being renounced had died on the date determined under subdivision (1) or (2) of this subsection, and upon the filing of the renunciation the persons in being as of the time the person whose property or interest is being renounced is deemed to have died will immediately become entitled to possession or enjoyment of any such future interest.

(b) In the event that the property or interest renounced was created by testamentary disposition, the devolution of the property or interest renounced shall be as provided in G.S. 31-42 notwithstanding that in fact the person whose property or interest is being renounced has not actually died before the testator.

(c) In the event that the decedent dies intestate, or the ownership or succession to property or to an interest is to be determined as though a decedent had died intestate, and the person whose property or interest is being renounced has living issue who would have been entitled to an interest in the property or interest if the person whose property or interest is being renounced had predeceased the decedent, then the property or interest renounced shall be distributed to such issue, per stirpes. If the person whose property or interest is being renounced does not have such issue, then the property or interest shall be distributed as though the person whose property or interest is being renounced had predeceased the decedent.

(d) In the event that the property or interest renounced was created by a revocable or irrevocable inter vivos trust, the devolution of the property or interest renounced shall be as

provided in G.S. 36C-6-605 notwithstanding that in fact the person whose property or interest is being renounced has not actually died before the event that would otherwise cause the property or interest renounced to pass to the person whose property or interest is being renounced.

(e) If a trustee files, within the time period described in G.S. 31B-2(a), a renunciation of an interest in property, the interest does not become trust property. If a trustee does not file a renunciation of an interest in property within the time period described in G.S. 31B-2(a), the interest passes to the person or persons who would have taken the interest as of the date of the renunciation if the trust had never existed.

(f) Except as provided in the instrument of renunciation, if a renunciation causes property to pass to a trust in which the person whose property or interest is being renounced holds a power of appointment, the person renouncing is deemed to have renounced the power of appointment with respect to assets passing into the trust by reason of the renunciation if the person renouncing is a person who holds a right to renounce the power of appointment.

(g) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving tenant by the entireties upon the death of the other tenant is deemed to be a one-half interest in the former entirety property, and title to that one-half interest passes as if the deceased tenant survived the tenant renouncing.

(h) Unless otherwise provided in the instrument of renunciation, the interest in property being renounced by a surviving joint tenant with right of survivorship is deemed to be the fractional interest of the deceased joint tenant to which the surviving joint tenant would have been entitled by right of survivorship, and title to that fractional interest passes as if the tenant renouncing predeceased the deceased joint tenant.

(i),(j) Reserved for future codification purposes.

(k) A renunciation is binding upon the person whose property or interest is being renounced and all persons claiming through or under that person. (1975, c. 371, s. 1; 1979, c. 525, s. 6; 1989, c. 684, s. 5; 1993, c. 308, ss. 1, 2; 1998-148, s. 3; 2009-48, s. 6.)